Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

TENG LI-ANN LEE - Petitioner

VS

CITY OF RANCHO PALOS VERDES.

A Body Politic And Does 1 Through 20 Inclusive -

Respondents.

On Petition For A Writ Of Certiorari

To The Court Of Appeals Of the State Of California,
Second Appellate District, Division Six,

PETITION FOR WRIT OF CERTIORARI

PETITIONER IN PRO PER

Teng Li-Ann Lee
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Rancho Palos Verdes,
CA 90275.
(310)-377-3999

QUESTION PRESENTED FOR REVIEW

1. Whether a political subdivision of a state may maintain an action under the Supremacy Clause of the United States Constitution to challenge state action that conflicts with federal law.

2. **Does local government function incorrectly?**

A Municipal Corporation violates its own Code, breaches legal procedure, refuses to do its duty (which is a misdemeanor), acts arbitrarily, capriciously, and abuses power, abuses discretion, violates due process of law, treats people unequally.

Deprivation of rights or privileges under color of law interferes with a Citizen's peaceful exercise of rights which is a violation of civil rights, public rights, and constitutional rights.

Question Presented For Review:

1 . What is the evidence in support of the Superior Court judgment? See Appendix B, Appendix A and A1.

2 . Can the City violate the Municipal Code and refuse to enforce the Code and refuse their duty, when a citizen alleges that the City abuses its discretion and exhibits abuse of power. Citizen files Writ of Mandate requesting judicial review should the Court require a stipulation for hearing without evidence being presented without witnesses and without a trail? See minutes c.t. 000258

3. When the superior Court excludes evidence dismiss without leave amend should the Court of Appeal in lieu of the Trial Courts position look into the merits of the case?

4.a .Why is Gov Code of Civil Procedure Section 1094.6 not applicable? According to the Superior Court Judge.

b. Why did the Court of Appeals rule that it was "if applicable"?

c. Why the City advised Petitioner in Resolution No. 96-78 that the "time within which the judicial Review of the decision reflected in this resolution, if available ,must be sought is governed by Section 1094.6 of the California Code of Civil Procedure." See C. T 000052

d.Why does the City not admit what they provided to the citizen?

5.Why did the Court of Appeal say" Code of Civil Procedure section 1094.6, subdivision (b)----If this statute applies to this

action, appellant's petition was timely? "and also said" if applicable"?

6. Why do the nature of Proceedings show that "Court finds that the Writ of Mandate is filed untimely pursuant to Government Code 65009, subsection C.? (Minutes entered 7/10/97} by the See C. T. 000258

7. Why was it untimely? Gov Code 65009 contains subsections from a-i Why did the Superior Court and Court of Appeal choose subsection c " without the evidence presentation ? A Citizen's common knowledge tells petitioner can they make a correct judgment?

subsection c has many condition ,petitioner's case exactly qualify under subsections a, b ,c-4. h. i .

Petitioner filed on writ of mandate and judicial review both timely according the law.

Sect 3,1996, The Resolution 96-98 sect 6 it said "The subject property shall be brought in to compliance with the Municipal Code within sixty days of this action becoming final "

My question is:

8. Did both courts recognize that a citizen can not sue the City doing this sixty days ? Sept.3,1996 is not the final day. According to Gov Code 65009 subsection c-4. h. i. According to Anyone Will not be bothered during this 60 day period..

9. Did both Court count this 60 days ? petitioner continually raised the issue in both Court .

10. Gov Code 65010, Why did no Court pay any attention when Petitioner repeatedly told the judge, there is continuing impact and injury. Because the record the case was a violation case it is continue impact and injures to us when petition raise GOV Cod 65010 , because the Prejudicial errors.

11. On Jan.26, 1997, a the hearing was scheduled in Department B of Torrance Superior with a writ of mandate judge. Why 3 days before the hearing was it moved to department J a family judge make the decision.

12. In the hearing citizen repeatedly talked the violation How Can Petitioner not receive any attention from the Court ?

.Sept 3, 1996 the City Councils vote 4/1 to making the resolution without correct measurement .Why the city manager say measurement is "unnecessary"? The illegal driveway without state highway permit .It has not been removed .It has not been redesigned.

13 Did the City council recognize the liability for approving the design in danger condition?

14 Does the City council know in giving an after –the-fact given after the fact tree permit without following the state of California tree Laws without a fine ,will encourage people to Cut down trees without permit and build illegally ?

15 Does the City of Rancho Palos Verdes known if it approves a conditional use permit in the public right-of-way unreasonable

unconstitutional in the residential area it will cause a public nuisance and private nuisance?

16 Should the Citizens suffer because the City violates The due process of law in the zoning and planning and from the entire legal procedure? Should citizens be treat unequally ? Should citizens be interfere peaceful exercise of their right ? Should be amend because the justice?

Should City refuse their duty push citizen to Court ? Should waste taxpayer's money because the violation and negligence

17 Shall the Court of Appeal of the State of California give "not to be published" before the Supreme court's decision ? According Rule 29.4 Disposition of causes {Dismissal of view)

Rule 29 Grounds for review in Supreme Court (b)(2) any issue or any material fact that was omitted from or misstated in the opinion of the Court of Appeal , unless the omission or misstatement was called to the attention of the Court of Appeal in a petition for rehearing. All other issues and facts may be presented in the petition for review without the necessity of filling a petition for rehearing.

18 My quest is Why was rehearing denied By the Court of Appeal Review denied by Supreme Court?

19 Supreme Court Chief Justice GEORGE in Dec, 21,1998 had order transferred of the case from Division tree to Division six . From Los Angeles County to Ventura County ,Why did he not read opinion from Court of Appeal Division.?

20 .Rule 29.6 Errors in terminology to be disregarded; Rule of Construction A petition to the supreme Court for transfer, hearing or review shall be liberally construed as a request for the appropriate relief. Why was Review denied?

21 The issue of "estoppel" is a highly factual one which is not amenable to a demurrer. Leave to amend the petition in this case to allege facts showing estoppel should have been freely granted." Why was it not ?

22 "liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given" Angie M. v. Superior Court (Hiemstra) (1995) 37 CA4 th 1217, 1227.

Why is the Court so hard on me?

LIST OF PARTIES

City of Rancho Palos Verdes:

City Manager: Paul Bussey

Director of Planning, Building, and Code Enforcement: Bret B. Bernard

Code Enforcement Officer: Jon A. Pollard

City Attorney: Carol W. Lynch, Esq.

Director of Planning, Building, and Code enforcement: Carolynn Petru

Councilman: Tom Hollingsworth

Councilwoman: Barbara Ferraro

Councilman: Lee Bryd

Mayor: Marilyn Lyon

Supreme Court of California Chief Justice: Ronald M. George

The Superior Court, County Of Los Angeles, Thomas H. Parrott, J

The Court Of Appeals Of the State Of California, Second Appellate District, Division Six Burke J. Gilbert, Acting P. J.

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TABLE OF AUTHORITIES

UNITED STATES CODE ANNOTATED TILE 42Public Health And Welfare ------2000 a-1, 2000 a-2, 2000a-3 ,2000-5, 2000a-6

UNITED STATES CODE ANNOTATED TILE 42 Public Health And Welfare CHAPTER 21 –Civil Rights Section 1983.1985.

UNITED STATES CODE ANNOTATED TILE 18 Crimes and Criminal Procedure ----------Section 241,242
CONSTITUTIONAL LAW--- 251.6 U.S.CA Const .Amend 14,

CONSTITUTIONAL LAW -- 314,318(1), 277(1) ,278 U.S.C.A

Const Amend 14

CONSTUTITIONAL LAW -- 251.,3 U.S.C.A.

Const Amend 14 CONSTITUTIONAL LAW ---

Section1436.-16D C.J.S.

Section 1396 ,1397,1429 1428 (b) 1437, -16D C.J.S

STATE STATUTES

West's Annotated California Codes Pedal Code Section

Public Health Safety Title 10 section, 371.372 (1) (2)(5)

West's Annotated Code :Codes of Civil Procedure:

1094.5 Special Proceedings note 104 ,1094.5 Writ of Mandate

note 172 section 389.5- note 20: jurisdiction

section 1060. right of action section 731 note 85 ;injunction

1094.6 Code of civil Procedure:

California Government Code 65009 Planning and zoning

65010 Application of Formal rules of evidence or Procedure:

effect of error

TABLE OF AUTHORITIES

west's Annotated California Codes section

809 Estate in Real

Property note 8: injunctions section 810 .

Case reference:

1) People of the State of California,v Superior Court,County of Marin. Cal.App.3d 167
2) Leonard Tyson and Maryann Tyson v City of sunnyale,William F. 920 F.Supp.1054n.d.Cal.1996)

PETITION FOR WRIT OF CERTIORARI

Citizen Teng Li-Ann Lee respectfully petitions this court for a Writ of Certiorari to review the judgment of the California State Court of Appeals affirming dismissal without leave to amend based on the unfair decision made by the Superior Court of California, County of Los Angeles. The City provided an untruthful report to the Court. The Court used it for the opinion. In the Supreme Court of California, the City moved for summary judgment and an opinion of both Courts, denying the judicial review. The citizen was advised by the City to use Section 1094.6 of the California Code of Civil Procedure. The City should be estopped because it relied on a different portion of the law and used it incorrectly against the citizens appeal.

The citizen filed for a Writ of Mandate through judicial review requesting declaratory relief by injunction and a peremptory Writ because this case is clearly open and closed, causing "Deprivation of Rights under color of law," .and "Conspiracy against rights of citizens." Because the Court judgment and the City Council's Resolution conflict with state law, federal law, and constitutional law according to the Fourteenth Amendment of the Federal Constitution. A citizen is entitled to a Review of Judicial Proceedings, the liability of governmental agencies, and the right to justice and remedies for injuries.

Based on the Case "Minor Exception Permit - 501 appeal," there is a clear showing that the City of Rancho Palos Verdes, a municipal corporation abused power, abuses discretion and abuses homeowners. and discriminates against the appellant. The citizen provided a written report of the violation to the City on November 8, 1995. This was before notice was given of this Minor Exception

Permit, before the approval and before the appeal, the citizen heard approved before She received notice.

The City used the" Minor Exception Permit" illegally on an after-the-fact, violation case, the City continually violates the law, interfering with the citizen peaceful exercise of constitutional rights. It was extremely dangerous to the public, and also caused extreme damage to the public and to me personally, causing extreme mental distress. The citizen is treated contemptuously by the City. This contempt is unjust and unacceptable and unconstitutional.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS AND ORDERS ENTERED BELOW

The order of the Superior Court of the State of California the County of Los Angles Southwest district dismissed without leave to amend. Appears at (Appendix A).The minutes entered at 7/10/97 see(Appendix A-1)

The opinion of the Court of Appeal of the State of California Second Appellate Court Division appears at (Appendix B)to the petition and is unpublished. ...

And denying Citizens petition for rehearing is unreported.

The Order of the supreme Court of California ,Petition For review DENIED. Appears at (Appendix C)

CONSTITUTIONAL PROVISIONS INVOLVED

The supremacy clause, United States Constitution, Article VI, clause 2 ,provides: "This Constitution, and the Laws of the United States ...shall be the Supreme Law of the Land."

JURISDICTION

The opinion of the Court of Appeals of the State of California Second Appellate Court ,Division Six, was entered on March 3,1999.

A copy of that opinion appears at Appendix B to the petition and is unpublished.

A timely Petition for Rehearing was entered on March 18,1999, when a citizen filed a petition requesting that the Court direct an estoppel" rehear the appeal ,and that City would be estoppeled to rely on a different portion of the law against the appeal where "justice and right require it ." The request for a rehearing was denied on the cover sheet. Is unreported.

The case requesting review was filed in the Supreme Court of California was April 12,1999 ,date on which the highest state court decided my case was May 26,1999, A copy of that decision appears at Appendix C . petition for review denied. The request for a Writ of Mandate was never honored, and the judicial review and review of non- judicial action by the city never began in the state courts. .The jurisdiction of the United States State Supreme Court is invoked under 28 U.S.C. ξ1257(a) and 1254. .

STATEMENT OF THE CASE

"Minor Exception Permit-501 appeal" This case presents the question of the Citizens filing a Writ of Mandate requesting judicial review to reviewing a non judicial action of the city.

ANSWER COURT QUESTION –with authorities

1. **Appellant's petitions were not filed and served within the time prescribed by Government Code section** 65009, subdivision (c), **and her action is barred.**1

According Code Of Civil Procedure Section

1094.6. Judicial review; decisions of local agencies; petition; filing; time; record; decision and party defined; ordinance or resolution

(a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof ,may be had pursuant to Section 1094.5 of this code only if the petition for Writ of Mandate pursuant to such section is filed within the time limits specified in this section,

(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision in any applicable provision of any statute, charter, or rule, for the purpose of this section, the decision is final on the date it is made. If there is such

Provision for reconsideration, the decision is final **for the purposes of this section** upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration sought pursuant to any such provision the decision

is final **for the purposes of this** section on the date that reconsideration is rejected. So according this rule, **Nov 19,1996** , when director refused to give correct number on the 50% the from yard set back lots coverage **Nov 19,1996** is the date of Decision is final. **60 days for compliance the Code is for the decision is final upon the expiration of the period which such reconsideration can be Sought .**

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

(Amended by Stats. 1983, c. 818, ξ 3; Stats. 1991. C. 1090 (A.B.1484), ξ 6; Stats.1993, c. 926 (A.B.2205), ξ 5; States. 1995, c. 898 (s.B.814), ξ 1.)

GOV.COD Section 65587.LOCAL PLANNING

Conformity; extension of time; action to review conformity; time for compliance with finding of court; additional time

(c). **If a court finds that an action of a city, county, or city and county, which is** required to be consistent with its general plan, **does not comply with its housing element, the city, county, or city and country** shall bring its actin into compliance within 60 days

However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's

determination that the 60-day period for compliance would place **an undue hardship on the city, county, or city and county, the** court may extend the time period for compliance by an additional 60 days.

So Resolution No.96-78 See **C.T Volume 1** - page 000052 Section 6 and last 2 line

(a) "The subject property shall be brought in to compliance with the Municipal Code within sixty (60) days of this action becoming final.

* Petitioner Request Judicial Review filed Writ Of Mandate on Nov 27 ,1996 .amended petition filed on Jan 24,1997, **on Jan 29 ,1996 first request proof mailing service from Torrance court Marshall department, petitioner** didn't know why become to personal proof of service personal severe execute on Feb 11, 1997 from long beach , however even count Feb 11 ,1997 , is the date city received that was 84th day on the 90 day like petitioner always said "I filed in time , in this case Citizen "Exhaustion of administrative remedies"

According GOV.COD Section 65009 Planning and Zoning

- Petitioner 's case shall not barred by 65009 (c)
- **Ninety-day limitations period for seeking judicial review of city council's decision denying fire fighter's application for disability retirement began to run on date of notice, rather than date of**

decision; decision was not final until **required notice was given. Cummings v, City of Vernon (App.2 Dist.1989)**

- **Petition for writ of mandate is a special proceeding and terminates by judgment when the wit issues; issuing court retains jurisdiction to make any orders necessary and proper for enforcement of the writ. California Teachers Ass'n v. Governing Bd. Of Simi Valley Unified School Dist. (App. 2 Dist. 1984) 207 Cal.Rptr. 659, 161 Cal.App.3d393.**

GOV.COD Section 65009

- (c) Except as provided in subdivisions (d) and (l) No action or proceeding shall be ---

  ------- is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

Subdivision (c)

- **(1) To attack, review, set aside, void, or annul the decision of legislative body to adopt or amend a general or specific plan**. This paragraph does not apply where an action is brought based up the complete absence of a general plan or a mandatory element thereof, **but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.**

- **(4) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. An action or proceeding to attack, review; set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. This paragraph applies to development agreements, amendments, and modifications adopted on or after January 1, 1996.**

California Government Code

ξ65009 Planning and Zoning

A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or county clerk by the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(h) Except as provided in paragraph (4) of subdivision (c) , this section shall be applicable to those decisions of the

legislative body of a city, county made pursuant to this division on or after January 1, 1984.

(i) where the action or proceeding challenges the adequacy of a housing element, the action or proceeding may be initiated up to 60 days following the date the Department of Housing and Community Development reports its findings concerning the housing element pursuant to subdivision (h) of Section 65585.

(Added by Stats. 1983, c. 1138, §1. Amended by Stats. 1984, c. 1685, §1; Stats. 1987. C. 218, § 1; Stats. 1995, c. 253 (S.B.333), § 1; Stats. 1996, c. 799 (S.B. 1748), § 2.)

§ 65010. Application of formal rules of evidence or procedure; effect of error

(a) Formal rules of evidence or procedure applicable in judicial actions and proceedings shall not apply in any proceeding subject to this title except to the extent that a public agency otherwise provides by charter, ordinance, resolution, or rule of procedure.

(b) No action inaction, or recommendation by any public agency or its legislative body or any of its administrative agencies or officials on any matter subject to this title shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices,

findings, records, hearings, reports, recommendations, appeals, or any matters of procedure subject to this title, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

(Added by Stats.1984, c. 1009, § 1.6. Amended by Stats. 1985, c. 114, § 3, eff. June 28, 1985.)

respect to the legitimate purpose of the law receive like treatment." In brief, equal protection of the law means the protection of equal laws, and a law that confers equal right on all persons similarly situated with respect to such law, or subjects them to equal burdens, is an equal law."41

No rule as to what may be regarded as a denial of the equal protection of the laws which will cover every case can be formulated, and no test of the type of cases involving the equal protection clause can be infallible or all-inclusive.

297. Nature of guaranty

The equal protection clause creates no new legal rights and unlike the due process clause, it does not guarantee any minimum of protection "it merely operates on legal rights as it finds them established, and declares that, such as they are in each states, they shall be enjoyed by all persons alike according to the respective conditions of each. 13 cal jur 3d (rev) part 1

Gov. Code 54950. Declaration, intent; sovereignty

In enacting this chapter, the legislative finds and declares that the public commissions, boards and councils and the other public agencies in this state exist to aid in conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what

is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Gov. Code 54959 Penalty for unlawful meeting

Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

Gov. Code 54961 Use of facility allow discrimination: applicability to local agencies

No local agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person or persons on the basis of race, religious creed, color, national origin, ancestry, or sex.

Constitutional And Statutory Provisions Involved

1. Constitutional Law 251.6

   At core of due process clause is right to notice and hearing at meaningful time and in meaningful manner.

2. Constitutional Law 314, 318(1)

   Fair trial and fair tribunal is basic requirement in due process which applies not only to courts but also to state administrative agencies. U.S.C.A. Const.Amend. 14.

3. Constitution Law 277(1)

* Before the Resolution was more than 85.68% over the 50%

Section 2: That all of the paved areas within the required front yard setback area constitute coverage. In addition, the grass area between the concrete strips which comprise the semi-circular driveway is part of the driveway and parking area on the site, since vehicles can be driven and parked over this area, and because, although the grass strip is a pervious surface, it does not constitute at least 75% of the area being used as a driveway and/or parking area. Therefore, the grass strip shall be counted as coverage. As a result, the total amount of coverage within the front yard setback area on the subject property is 85.68%, and exceeds the 50% maximum amount of coverage allowed by the Municipal Code and also exceeds the 70% maximum amount permissible through the approval of a Minor Exception Permit; and,

000033

* After the Resolution (Section 2) the facts was omitted

Section 1: That Rancho Palos Verdes Municipal Code Section 17.40.030(D) states: "Except for driveways and parking areas in RS districts, all of the required front and street-side setback areas shall be landscaped, unless otherwise provided in the zoning district standards. Drives and parking areas in RS districts shall not cover more than fifty percent of the required front or street-side setback areas."

Section 2: That all of the paved areas within the required front yard setback area constitute coverage; and,

Section 3: That the City Council found that there was insufficient evidence that the additional coverage is warranted by practical difficulties, unnecessary hardships or results that, without the Minor Exception Permit may be inconsistent with the general intent of Rancho Palos Verdes Municipal Code, Title 17 (Zoning), since:

1. The subject property has relatively flat topography and a regular, rectangular shape. In addition, the subject lot is 90 feet wide, which is the lot width found on most existing lots in the RS-2 zoning district and is the minimum width required for newly created lots in the RS-2 zoning district. As a result, the configuration, topography and square footage of the required front yard setback area on the subject lot is similar to other lots in the RS-2 zoning district. Therefore, there is no

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The property interests protected by due process clause are defined by state law. U.S.C.A. Consti.Amend. 14.

4. Zoning and Planning 21, 375.1

Under California law, there is no right to any particular or anticipated zoning nor is there right to discretionary permits.

5. Constitutional Law 251.6

In attempting to make out claim of unconstitutional bias for purposes of procedural due process claim regarding unfair hearing, plaintiff must overcome a presumption of honesty and integrity on part of decision makers. U.S.C.A. Consti.Amend. 14.

6. Constitutional Law 251.3

Due Process Clause includes a substantive component which guards against arbitrary and capricious government action, even when decision to take that action is made through procedures that are in themselves constitutionally adequate. U.S.C.A. Consti.Amend. 14.

7. Constitutional Law : Right to justice and remedies for injuries

Guaranty of justice without prejudice. "...that the courts shall be open to every person; that each individual shall have a prompt and certain remedy by due course of law for injuries which he may receive in his person, property, or reputation; that he shall obtain such remedy freely without being obliged to purchase it; and that justice shall be administered without denial, delay, or prejudice."

8. Protection of this amendment can be invoked only if a state deprives any person or denies enforcement of a right guarenteed. Rice v. Sioux City Memorial Park Cemetery, Iowa 1955, 75 S.Ct. 614. 349 U.S. 70, 99 L.Ed. 897

9. This clause offers no shield against private conduct "however discriminatory and wrongful." Jackson v. Metropolitan Edison Co., Pa. 1974, 95 S.Ct. 449, 419 U.S. 345, 42 L.Ed.2d 477.

1094.5. Review of administrative orders or decision; filing record; extent of inquiry; abuse of discretion; relevant evidence; judgment; stay

(a)--

(b)The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; where there was a fair trial; and whether there was any prejudicial abuse of discretion. A abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not

supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in

which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the finding are not supported by the weight of the evidence; and in all other cases, abuse of discretion is

established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

101. Federal regulation requiring that final decision be rendered within 90 days of for

request hearing concerning FDC benefits mandate · prompt administrative action ;remedy for violation is a petition for writ of mandate to compel timely action and not to terminate the administrative process altogether. Westfall v Swoap (1976)129 CalRptr.750,58C.A.3d 109

GOV.COD 65801 ZONING REGULATIONS NOTE 7 Limitation

Legislature, which authorized local governments to enact zoning ordinance and declared that it was its intention to provide only minimum limitation so that counties and city might exercise maximum degree of control over local zoning matters, did not preempt stature of limitations for judicial review of county zoning ordinances. Pan Pac. Properties. Inc. v. Santa Cruz county (1978) 146 Cal.Rptr.428,81 C.A. 3d 244.

V. Authorities for appeal

Gov. Code 54960 Action to prevent violations or determine applicability of chapter

Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or prevent violations or—

Gov. Code 65033 Public participation

The legislature recognizes the important of public participation at every level of the planning process. It is therefore the policy of the state and the intent of the legislature that each state, regional, and local agency concerned in the planning process involve the public through public hearing meeting, publicity and other means available to them, and that such hearings and other public forms, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies, and actions.

Constitutional law 296 definition "equal protection of the laws"

The clause guarantees to persons under like circumstances that they shall have equal protection and security in the enjoyment of personal and civil rights, in the acquisition and enjoyment of property in the enforcement of contracts, and in the prevention and redress of wrongs, and that they shall be subject to similar taxes and penalties.

"The concept of equal protection of the laws compels recognition of the proposition that persons similarly situated

TABLE OF AUTHORITIES CITED

65801. Rules of evidence and procedure

"Formal rules of evidence or procedure which must be followed in court shall not be applied in zoning matters, except to the extent that a county or city may provide therefore. No action, inaction or recommendation regarding any zoning matter by any legislative body or any administrative body or official of any county or city shall be held void or invalid or be set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission (hereinafter called "error") as to any matter pertaining to petitions, applications, notices, findings records, hearings, reports, recommendations, appeals, or any matters of procedure whatever, including, but not limited to, those included in this section, unless after an examination of the entire case, including the evidence, the court shall be of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown."

(Added by Stats. 1965, c.1880, p. 4346, ξ 6.)

Notes of Decisions 3: Due process

"Due process requires that affected property owners be afforded notice and opportunity to be heard before a local ordinance which substantially affects land use is adopted, except for extraordinary situations where some valid governmental interest justifies postponing the hearing until after the event." Taschner v. City Council of City of Laguna Beach (1973) 107 Cal. Rptr. 214, 31 C.A.3d 48.

ξ 69. Lapse of time-Public nuisance

"The Civil Code expressly provides that no lapse of time can legalize a public nuisance amounting to an actual obstruction of public right. Hence, the statute of limitations constitutes no defense to an action seeking relief against a public nuisance, no prescriptive right can be obtained for the maintenance of such a nuisance, and laches is no defense. Nor can a public nuisance be legalized by the mere fact that its maintenance has for a long time been customary."

47 Cal Jur 3d

West's Annotated Code of Civil Procedure

ξ 389.5 Application to be made a party

"When, in an action for the recovery of real or personal property, or to determine conflicting claims thereto, a person not a party to the action but having an interest in the subject thereof makes application to the court to be made a party, it may order him to be brought in by the proper amendment."

(Added by Stats. 1957, c.1498, p. 2825 ξ 3.)

Note 20: Jurisdiction

"Where State sought abatement as nuisance of portion of fence constructed by defendant along boundary of lot upon an easement which had been reserved by defendant and which freed lot owner of any duty to maintain the fence and nonparty lot owner would not be bound by determination of boundary issue, even though that issue would be substantially identical to one which might be raised in later litigation in which he was a party, but owner was not an indispensable party and court had jurisdiction to proceed without his joinder." People v. superior Court, Marin County (1969) 81 Cal. Rptr. 555, 1 C.A.3d 167.

West's Annotated California Codes: code of Civil Procedure

ξ 1060. Right of action; actual controversy; scope; effect of declaration

"Any person interested under a deed, will or other written instrument, or under a contract, or who desires a declaration of his rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may in cases of actual controversy relating to the legal rights and duties, of the respective parties, bring an original action in the superior court or file a cross-complaint in a pending action in the superior, municipal or justice court for a declaration of his rights and duties in the premises, including a determination of any question of construction or validity arising under such instrument or contract. He may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of such rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force of a final judgement. Such declaration may be had before there had been any breach of the obligation in respect to which said declaration is sought."

(Added by Stats. 1921, c. 463, p. 689, ξ 1. Amended by Stats.1965, c. 959, p. 2579, ξ2; Stats. 1976, c. 1288, p. 5765, ξ 18.)

ξ731: Note 85: Injunction- In general

"In granting an injunction against the maintenance of a nuisance, where the complainant's rights are certain and the invasion of them is clearly established, a court of equity cannot consider the inconvenience wish will result to defendants from the granting of an injunction; nor is it the province of a court to speculate upon, or to consider, or to suggest, any possible mode by which defendants may avoid the injurious consequences of their acts, or to decide upon the conflicting opinions of scientific experts concerning the feasibility or sufficiency of such suggested mode,- the only duty of the court being to grant the release to which complainant is entitled upon the law and facts of the case." Woodruff v. North Bloomfield Gravel Mining Co. (C.C.1884) 18 F. 753, 9 Sawy. 441.

"An abatement of a nuisance is accomplished in a court of equity by means of an injunction proper and suitable to the facts of

each case." Guttinger v. Calaveras Cement co. (1951) 233 P.2d 914, 105 C.A.2d 382.

"Injunction is proper method of abating a nuisance." Id.

"If nuisance invades private right, cause of action for injunction exists." Fendley v. City of Anaheim (1931) 294 P. 769, 110 C.A. 731.

"Acts constituting nuisance may be enjoined, although same acts are of criminal nature." People ex rel. Stephens v. Seccombe (1930) 284 P. 725, 103 C.A. 306.

West's Annotated California Codes: Civil Codes

ξ809 Estate in Real Property

Note 8: Injunctions

"Preliminary injunction may lie to protect enjoyment of easement, or against obstruction of it, or for abatement of nuisance constituted by such obstruction." Hartsif v. Wann (1956) 293 P.2d 65, 139 C.A. 2d 119.

"In injunction action against defendant who had constructed a fence across road allegedly used by general public, including plaintiff, for more than 35 years, it was not an abuse of discretion to grant a preliminary injunction." Id.

"Equity will in a proper case award a mandatory injunction for protection of an easement, will enjoin a threatened interference, and will require repair of an injury already done or removal of an obstruction already erected, but each case is determined according to the particular circumstances and it rests in the sound discretion of court whether a mandatory injunction will issue." Pacific Gas & Elec. Co. V. Minnette (App.1952) 246 P.2d1025.

"To entitle complainant to a mandatory injunction for protection of an easement, the right must be clear and there must be a material interference with the right of owner of easement and the damages sustained must be more than merely nominal." Id.

"In determining whether to award a mandatory injunction for protection of an easement, court will consider the expense which will be occasioned to defendant if writ is granted, as against inconvenience to be suffered by complainant, if it is refused, and where removal of obstruction will bring no actual advantage, or expense entailed thereby will be entirely disproportionate to the benefit resulting, complainant will be relegated to his legal remedy." Id.

"Where it was established that plaintiff had right of easement over portion of defendant's land as means of egress and ingress to garage, injunction which required defendant to remove portion of certain obstructing wall and from interfering with use in easement by plaintiff and from constructing any obstruction thereon, or abrupt grade which would interfere with plaintiff's use of right of way, was not unjustified, since all defendant was required to do was to restore area to its original condition and thereafter refrain from interfering therewith." Greiner v. Kirkpatrick (1952) 241 P.2d 564, 109 C.A.2d 798.

"Where plaintiffs and purchaser of adjoining property orally agreed to jointly use and maintain road across purchaser's property giving the only access to plaintiffs' land and both paid respective share of one year" repair work, and plaintiffs orally agreed with defendants who thereafter purchased the adjoining property for mutual use of road and for maintenance by plaintiffs only, and plaintiffs incurred substantial expenditure for necessary maintenance in the succeeding year, and defendants accepted benefits of such work and used road, plaintiffs had an executed irrevocable parol license to use road and owned an easement therein and would be granted injunction against interference with such use." Cooke v. Ramponi (1952) 239 P.2d 638, 38 C.2d 282.

"The owner of a lot having a way appurtenant may, by a mandatory injunction, compel the removal of a stairway which obstructs such way; equity having jurisdiction on the principle of avoiding a multiplicity of suits." Stallard v. Cushing (1888) 18 P. 427, 76 C. 472.

§810. Owner of servient tenement; possessory action

"ACTIONS BY OWNER OF SERVIENT TENEMENT. The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public." (enacted 1872.)

37 Cal Jur 3d

Rights and Title of Public and Abutting Owners [ξξ 61-68]

"Easement for the right-of-way (ξ 61). The public may remove all obstructions which might hinder the use of a highway or street, and city authorities may authorize the use of streets for all purposes which serve the public good (ξ 62). A municipality may bring an ejectment action to recover possession of a street (ξ 63). The owners of property abutting a highway or street have certain rights in addition to those possessed by the general public; while these rights may not be substantially impaired by the public without compensation, they must yield to the public use of the road (ξ 64). One of the rights of an abutting owner is the right of access to his property by way of the street or highway (ξ 65), but this right is severely restricted when an individual's property abuts a freeway (ξ 66). An abutting owner also has the right of lateral support, and if he owns the fee to the land over which a highway passes, the right to use the substratum under the highway (ξ 67). Abutting owners may plant and maintain trees along streets and sidewalks, but they may be trimmed or removed if required for public safety (ξ 68)."

West's Annotated Codes: Codes of Civil Procedure

ξ1094.5 Special Proceedings

Note 104

"Courts will not attempt to compel public official to exercise his discretion in any particular manner, but, if law imposes specific duties on official and he, either whimsically or arbitrarily, refuses to perform such duties, or if official's refusal is based upon erroneous conclusion of his legal duties, or if right of individual is so fixed that official's refusal amounts to clear abuse

of discretion, such error will be corrected in proper judicial proceedings." Bess v. Park (1955) 281 P.2d 556, 132 C.A.2d 49.

ξ 1094.5 Writ of Mandate

Note 172: Constitutional questions

"Scope of judicial review accorded constitutionally protected interests is shaped by constitutional and not statutory factors and touchstone is nature of interest at state, whether it is a constitutionally protected status or some lesser interest and if the former, no less than a de novo, independent judicial review is permissible." C. V. Superior Court for Sacramento County (1973) 106 Cal. Rptr. 123, 29 C. A.3d909

STATEMENT OF THE CASE

Petitioner appeals a "Minor Exception Permit-No. 501 "in the City of Rancho Palos Verdes , On Aug 6,1996 Council voted 4/1 decision made to removed the illegal driveway in the public hearing .

Petitioner was waiting for the illegal driveway to be remove, but there was noting heard until Aug .17,1996, by receiving a phone call from friend . I was shocked that the City of Rancho Palos Verdes be going to have a "reconsideration hearing" I called the mayor She said she didn't know . and I called the councilman he said he will be going to find out.

Aug 20, 1996.Minutes approved in regularly but petition no body mentioned this "reconsideration hearing" Petitioner received no notice. On Aug 26 Petitioner and her husband went to the City office Question Why I did not have notice It was tremendous pressure on our whole family.

September 3,1996. In the public hearing manager said that is his decision made before the Council. More important thing is the councilman propose the idea that Grass in an illegal driveway used as a driveway is open space to be counted as landscaping and thus permit the illegal driveway to stay. Even they know was wrong. They forgot petitioner was appeal a "Minor Exception permit " on the violation case.

On that day they vote 4/1 uphold appeal but does not remove the illegal driveway, they deny the minor Exception but through that resolution illegal driveway still remain, just like they forgot this" minor exception 501"was support this illegal driveway, or as if this minor exception permit never existed, or as if they don't need this minor exception, illegal driveway could stay.

The fact that they never thought this "minor exception permit would be use in a violation after-the- fact clear shows that they abuse their discretion ,and abuse their power just as if the appeal never made.

It was prejudicial abuse of discretion. Petitioner was paid $1880 to appeal for this issues, illegal driveway got stay. The light post also got stay and. Significant nature beauty was gone natural privacy was gone because of excessive illumination which direct disturbs the petitioner's house--- 12 lights make night time become day time ,even reflect in our inside window create the new light in our house , and result in loss of peace., from our only window which we can see out the window, the trees which were a focal point of the view are gone install a illegal driveway is a misuse and unnecessary and is tremendous in That time the owner had four car parking already .the driveway does not have State Highway Permit. It is unsafe parking and driving on the illegal driveway, two- strip concrete build in grass create a huge lots coverage from hill side from our 8 foot long window, the home across the street appears to be a two-story house the driveway appears to be a about 12 ft high, It is unsafe park on the grass , when case in court they stop using the illegal driveway, when the case was dismissed, they started using the driveway again. When the case was reinstated they stopped again. Now it is over 11 months since they stopped using the illegal driveway. After a citizen follow the legal procedure paid $1880 ,after 6 times inconsistency measurement. City intent not have survey before the resolution made without measured without ordinance actually the resolution not made for property, this condition use permit was made for person and use in the adverse possessing , city broken their own Code and refuse to do their duty devoured people's right , and their privilege, the people which follow the law the only way is back to the law.

THE FACTS OF THE CASE

First of all repondent violated the Site Plan review No

7212, in 1/25/93 a project description: Single story additions, ---- amd circular driveway. Planning clearence approval by Carolynn Petru date 1/25/93 said approval is granted subject to the following condition: 2. Max. driveway coverage in front setback: 900

5. max.wattage of incandescent lights in front yard: 75 watts

6. landowner shall arrange for a site vegetation inspection comply with any required by staff prior to the Issuance of building permits.

5/19/93 city had signed with property owner a covenant to maintain property to protect views recorded filed in the official records of the recorder's office in the county of Los Angeles, California which was recorded at 4 minutes past 8 am June 17, 1993.

Covenant received 6/7/93 in planning clearance record. This Covenant said: to maintain property to protect views for a "conditional use permit, variance, height variation, building permit, or other entitlement to construct a structure or to add livable area to a structure."

According to the above any item required notice. The Site Plan No. 7212 was approved without inspection base on the plane

was "adverse possession" the City issued a permit without following the Permit Requirement "give this permit and charged the fee" without notice to the public, without notice to the near area property owner, because when property owner cut down two of the 36 year old public street trees to make room for a two strip cement and break, this huge illegal driveway caused adverse environ mental effects for the property owner across the street who suffered adverse impacts property owner face adverse impact immediately, and extremely damaging .

"Minor Exception Permit-501 Appeal" The appeal is based on a written report of a violation on Nov. 8, 1995, because of an adverse environmental affect where a 36 year-old street tree was cut down to make room for a huge illegal driveway. Before this happened, City violated the Site Plan Review permit requirement No. 7212, on Jan. 25, 1993, without inspection, and without measurement of front yard set back, and with no notice and no hearing. On 5/19/93 the city had signed with the property owner a covenant of record in the County of Los Angeles. On Jun.17,1993, without notice and without a hearing, the Director of the Planning, Building, and Code Enforcement Department, used "Minor Exception" power to approve a Conditional Use Permit. On Jan. 15, 1996, Petititoner appealed to the Director. On 3/26/1996 the city approved the Conditional Use Permit without a state highway permit or a state tree permit, which was 35-40% overbuilt. On Sept. 3, 1996, the City voted 4-1 to uphold the appeal , and deny the "Minor Exception" but still voted 4-1 to use Resolution 96-78 against the appeal. Before that, on Aug.6, 1996, the city council had voted 4-1 to remove the illegal driveway.

Petitioner filed a Writ of Mandate in the Superior Court of Los Angeles County requesting a judicial review on the case "minor Exception Permit-501 appeal". I was appealed in the City of Rancho Palos Verdes from Director of Planning, Building Code Enforcement, though plan commission to the City's council.

To Request this court granting to the petitioner

1. That the court issue a Writ of Mandate directing the city to amend Resolution number 96-78 to reflect the motion as voted by the City Council;

2. That the city be directed to enforce the municipal code with regard to the front yard set back which requires 50% open space. Remove the concrete from the additional two strip illegal circle driveway on the public right-of-way (10 foot easement) on the lot 37 of Tract No. 24817 in the City of Rancho Palos Verdes as per Book 7581 Page 028, and Parcel(s) 019, any street public right- the- way improvement project without a permit needs to be remove or redesigned for safety reason, a proper landscaping and open space are important.

3. That the city be directed to cancel the permit issed after the fact for the destruction of 36 year old **pine trees** and to direct that the tree be replaced with one of size and type equivalent to the one removed;

4. City needs to stop giving after the fact tree removal permits, City should protect natural vegetation and prevent from indiscriminate removal without a permit. Without fine,

5 Innocent people should not be charged the appeal fee when the appeal is needed because of City's error appeal a violation case in the first place for $ 940 the fee should be waive before they speak. under Unite States Constitutional Law "Justice to be freely, without purchase.

6 City should reduce the appeal fee $940, and the addition $940 for appeal a error or violation, appeal fee cost $1880 ,it is outrageous , wheter the fee refund or not refund ,justice" not delivered which was unfair to citizens

7 Innocent people should not be charge the appeal fee when the appeal is needed because of City's error, or violation made by City, or appeal a violation, the $940 appeal fee should be waive before they speak under Unite States Constitution Law "Justice to be freely, without purchase.

8 Citizen Teng Li Ann Lee request that the area they are be restored to its original condition .

The petition for a writ of certiorari should be granted

The petition for a writ of certiorari should be granted

Respectfully submitted.

Teng Li Ann Lee

OCT 24, 2023

REASONS FOR GRANTING THE PETITION

1. Continuation of punitive damages and injury.

Because (1)Conspiracy to interfere whit the Civil Rights
(2)Fals Report in to public
(3)Obstructing justice
(4) Depriving persons of rights privileges.
(5) cause mental distress

2. City cannot maintain a public nuisance.
3. Adverse possession on easement.
4. City refuses to comply with the Municipal Code.
5. Error in judgement
6. Petitioner's knowledge of dangerous condition on the public right -of -way.
7. Petitioner filed writ of mandate requesting judicial review, both timely served.
8. United States Constitutional Law guarantees justice without prejudice.

*All records in Superior Court clerk's transcript and Court of Appeal's brief request hearing in the United States Supreme Court.

CONCLUSION

Disqualification of council members

Where three of five members of city council were disqualified to vote on ordinance and resolution revoking temporary zoning variance because they were biased and prejudiced and had determined in advance of hearings and presentation of evidence to vote for revocation or because they had not heard the evidence presented to council and one of two remaining members voted against ordinance and resolution, such ordinance and resolution were adopted arbitrarily and capriciously without affording grantee of variances a fair and impartial judgment upon the evidence presented and hence grantee was entitled to a trial de novo in certiorari and mandamus proceedings to review such action of city council. Saks & Co. V. City of Beverly Hills (1951) 237 P.2d 32, 107 C. A. 2d 260

A city was under no obligation to improve its streets but it was bound to keep them all in a reasonably safe condition, subject to statutory conditions. McLaughlin v. City of Los Angeles (App. 1943) 60 Cal.App.2d 241, 140 P.2sd 416.

In order for municipal corporations to be liable in negligence action arising out of street condition, municipal representatives must not only have had notice of condition which caused dangerous character of such condition. Loewen v. City of Burbank (App 1 Dist. 1954) 124 Cal.App.2d 551 269 P.2d 121.

In determining whether give condition of street is safe or unsafe, as respects liability of city for injuries, court cannot entertain general inquiry into results of use of street by all persons who use it, since question is not whether accidents do or do not occur, but whether they occur under given conditions. Wilkerson

v. City of El Monte (App. 2 Dist 1936) 17 Cal.App.2d 615, 62 P.2d 790.

Generally, liability of municipal corporation for injuries from defects or obstructions in streets was for negligence only. Brooks v. City of Monterey (app. 1 Dist. 1930) 106 Cal.App.649, 290 P. 540.

Fact that deceased automobile driver passed over private property to escape sudden peril of defective street due to negligence of defendant city would not relieve city from liability for death. Brooks v. City of Monterey (App. 1 Dist. 1930) 106 Cal.App. 649, 290 P. 540.

"Minor Exception Permit-501 Appeal" The appeal is based on a written report of a violation on Nov. 8, 1995, because of an adverse environmental affect where a 36 year-old street tree was cut down to make room for a huge illegal driveway. Before this happened, City violated the Site Plan Review permit requirement No. 7212, on Jan. 25, 1993, without inspection, and without measurement of front yard set back, and with no notice and no hearing. On 5/19/93 the city had signed with the property owner a covenant of record in the County of Los Angeles. On Jun.17,1993, without notice and without a hearing, the Director of the Planning, Building, and Code Enforcement Department, used "Minor Exception" power to approve a Conditional Use Permit. On Jan. 15, 1996, Petitioner appealed to the Director. On 3/26/1996 the city approved the Conditional Use Permit without a state highway permit or a state tree permit, which was 35-40% overbuilt. On Sept. 3, 1996, the City voted 4-1 to uphold the appeal , and deny the "Minor Exception" but still voted 4-1 to use Resolution 96-78 against the appeal. Before that, on Aug.6, 1996, the city council had voted 4-1 to remove the illegal driveway.

The petition for a writ of certiorari should be granted.

CONCLUSION:

According to Constitutional Law, each individual shall have a prompt and certain remedy by due course of law for injuries which he may receive in his person, property, or reputation; that he shall obtain such remedy freely without being obliged to purchase it; and that justice shall be administered without denial, delay, or prejudice.

Respectfully submitted,

Teng Li-Ann Lee

Date: Aug.22,1999

VERIFICATION

I am the Petitioner in this action. All facts alleged in the petition filed, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 23, 1999

Respectfully submitted

Teng Li-Ann Lee
55 Oceanaire Drive
Rancho Palos Verdes CA
90275 (310) 377-3999
Petitioner in Pro Per

APPENDIX A

RICHARDS, WATSON & GERSHON
A Professional Corporation
GREGORY M. FUNERT (State Bar No. 94058)
DANIEL L. PINES (State Bar No. 172419)
333 South Hope Street, 38th Floor
Los Angeles, California 90071-1469
(213) 626-8484

Attorneys for Respondent,
City of Rancho Palos Verdes

FILED

JUL 22 1997

JOHN A. CLARKE, CLERK
M Porse
BY M PORSE, DEPUTY

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF LOS ANGELES
SOUTHWEST DISTRICT

Case No. YS005563

[redacted] ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND DISMISSING FIRST AMENDED PETITION AS TO ALL RESPONDENTS

IT IS HEREBY ORDERED that the demurrer to the first amended petition be, and it hereby is, sustained without leave to amend.

IT IS HEREBY FURTHER ORDERED that the above-entitled action be, and it hereby is, dismissed as to all respondents.

DATE: JUL 22 1997

Thomas Parrott
Commissioner of the Superior Court

COMMISSIONER THOMAS H PARROTT

APPENDIX A-1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: 07/10/97 DEPT. J

Honorable Thomas Parrott Judge DEPUTY CLERK

Honorable Judge Pro Tem ELECTRONIC RECORDING

NONE Deputy Sheriff MONITOR Reporter

10:30 a.m. YS005563 Plaintiff Counsel IN PRO PER

TENG LI-ANN LEE (X) ET. AL. Defendant Counsel DANIEL PINES(X)

-VS

CITY OF RANCHO PALOS VERDES, ET

NATURE OF PROCEEDINGS:

DEFENDANT'S DEMURRER TO AMEND PETITION FOR WRIT OF

A stipulation for hearing to be held before Commissioner Thomas Parrott is signed and filed this date.

Matter is called for hearing in chambers.

Court sustains defendant's demurrer.

Court finds that the Writ of Mandate is filed untimely pursuant to Government Code 65009, subsection C.

Defendant is ordered to prepare the order and submit it directly to this department.

000258

MINUTES ENTERED
07/10/97
COUNTY CLERK

APPENDIX B NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE Of CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION SIX 2d Civil No. B 114776

TENG LI_ANN Lee, (Super.Ct.No.YS005563)

Plaintiff and Appellant,

v.

CITY OF RANCHO

PALOS VERDES,etc.,

Defendant and Respondent.

DIST.

JAN 3 1999

JOSEPH A. LANE Clerk

Teng Li-Ann Lee (appellant) appeals a judgment dismissing her action against the City of Rancho Palos Verdes (City). City's demurrer was sustained without leave to amend.

Appellant's petitions were not filed and served within the time prescribed by Government Code section 65009, subdivision ©, and her action is barred.1 The judgment of dismissal is affirmed.

FACTS

On August 25, 1995, City granted Robert Lie and Shirley Lie (Lie) permission to construct a circular driveway in front of their home. The permit was conditioned upon compliance with an element of City's zoning regulations that the driveway not cover

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1 ALL statutory references are to the Government Code unless otherwise stated.

more than 50 percent of the landscaped setback required for Lie's front yard.2

In December 1995, City's staff received and investigated a complaint from appellant that Lie's driveway exceeded the coverage allowed and that Lie had illegally removed a tree. City's staff determined that the new driveway exceeded the 50 percent allowed by the permit and confirmed that a tree had been removed without a permit. Lie responded to the violations by filing applications for a minor exception permit and for an after-the-fact permit to remove the tree. Lie's applications were approved. Appellant appealed to the planning commission to disapprove the permits, but the commission denied the relief requested and approved the permits.

Appellant appealed the planning commission's decisions to the City Council. On August 6, 1996, the City Council upheld the appeal and directed City staff to prepare a resolution reversing the decision of the planning commission. The first resolution prepared by staff included findings that would have required removal of the driveway. This first resolution was not adopted. On its own motion, the council calendared the appeal for rehearing on September 3, 1996. Following the rehearing, the City Council adopted Resolution No. 96-78, which altered critical findings in regard to the area of the setback under landscaping. The changes permitted Lie to comply with the code without removing the driveway.

Resolution No. 96-78 includes advice that "{t} he time within which the judicial review of the decision reflected in

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2 City's municipal Code section 17.40.030 (D) provides: "Except for driveways and parking areas in RS districts, all of the required front and street-side setback areas shall be landscaped, unless otherwise provided in the zoning district standards. Drives and parking areas in RS districts shall not cover more than fifty percent of the required front or street-side setback areas."

this Resolution, if available, must be sought is governed by Section 1094.6 of the California Code of Civil Procedure." City contends here and it its demurrer that section 65009, subdivision ©, governs this proceeding.

Appellant filed a "Petition for Writ of Mandate" on November 27, 1996. She filed an amended petition on January 24, 1997, and served the *amended* petition on February 11, 1997. Appellant then served the *original* petition on March 10, 1997. She said she delayed service because she wanted to give city a chance to comply with her requests. Neither petition included Lie as a party to the action.

The trial court sustained City's demurrer on the grounds the action was barred by the statute of limitations and it was fatally flawed by appellant's failure to include an indispensable party.

STANDARD OF REVIEW

The court reviewing a judgment entered after a demurrer has been sustained without leave to amend must determine whether the pleading states a cause of action and, if not, whether it can be cured by amendment. (Blank v. Kirwan (1985 39 Cal.3d 311, 318; Winding Creek v. McGlashan (1996) 44 Cal. App. 4th 933, 939.) We assume the truth of all properly pleaded material facts and give appellant's petition a reasonable interpretation. (Picton v. Anderson Union High School District. (1996) 50 Cal. App. 4th 726, 732-733.) We independently review questions of law. (International Engine Parts, Inc. v. Feddersen & Co. (19995) 9 Cal.4th 606, 611-612.)

DISCUSSION

Section 65009, subdivision ©, establishes time limits within which actions challenging certain local zoning and planning decisions must be filed and served. The code requires that an action attacking "any decision on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit" must be filed *and served* within 90

days after the legislative body's decision. (Id., at subd. © (5).) If this stature applies to this action, appellant's petition was untimely.

Code of Civil procedure section 1094.6, subdivision (b), also establishes a time limit for judicial review of a local agency decision. It provides that a petition for a writ of mandate "shall be filed not later than the 90th day following the date on which the decision becomes final." This section does not require service of the petition within 90 days. If this statute applies to this action, appellant's petition was timely.

Section 65009 is part of California's Planning and Zoning Law (S 65000 et seq.). The law establishes the authority Of must local government entities to regulate the use of land. (Topanga Assn. For a Scenic Community v. County of Los Angeles (1994 11 Cal. 3d 506, 518, fn. 18.) City's zoning ordinances are administered by its planning commission because it has neither a zoning board nor a zoning administrator. The power to issue or deny variances and other permits relating to land use is thus conferred upon City's planning commission. (SS 65901, 65902.) Appeals from decisions of the planning commission are taken to the City Council.

In its preamble to section 65009, the Legislature declared that restraints upon challenges to the local zoning and planning decisions are necessary to reduce delay and to provide certainty for property owners and local governments regarding decisions made pursuant to the act. The legislation specifically addresses judicial review of variances or permits granted by local planning or zoning agencies and limits review to challenges that are filed and served within 90 days of the legislative body's decision. Upon the expiration of the time limits, all attacks upon the validity of such decisions are foreclosed. (S 65009, subd. (e); *Freeman v. City of Beverly Hills* (1994) 27 Cal.App.4th 892, 897.)

Section 1094.6 of the Code of Civil Procedure governs writs of mandamus generally and is not specific to land use issues. It is the general ,and section 65009, subdivision (C) the specific,

statute with respect to lawsuits involving local zoning-related issues.

"when two statutes relate to the same subject, ordinarily the more specific and particular provision will govern as against the more specific general provision . . . ." (Gonzales v. County of Tulare (1998) 65 Cal. App. 4th 777, 786; San Francisco Taxpayers Assn. v. Board of Supervisors (1992) 2 Cal. 4th 571, 577.) Section 65009, subdivision (c), was enacted specifically to control challenges to local decisions about land use. If the more general prescriptions of Code of Civil Procedure section 1094.6 were applicable, a petition for writ of mandate could be filed, held and allowed to languish for months or longer. This would frustrate the Legislature's clearly expressed wish for prompt judicial review of challenges to land use decisions by local agencies. Thus, section 65009, subdivision (c), governs this proceeding unless City is estopped to assert its application.

City gave erroneous advice to appellant about the statute controlling the time within which her petition had to be filed and served. Bad advice by a public entity on matters of law may give rise to an estoppel where justice and right require it. (Lerner v. Los Angeles City Board of Education (1963) 59 Cal. 2d 382, 396-397; Driscoll v. City of Los Angeles (1967) 67 Cal. 2d 297, 306-307.) These principles apply where complainant relied upon the advice to his or her detriment.

The record here does not show appellant either read or relied upon City's inaccurate reference to Code of Civil Procedure section 1094.6. Appellant did not assert in her response to City's demurrer that she did not serve the original petition because she was misled. The only reason offered below was that she delayed service because she wished to give City a chance to comply with her requests. Further, appellant did not present this issue to the trial court and cannot raise it for the first time on appeal.

Appellant's original petition was filed but was not served within 90 days after September 3, 1997. Appellant's amended petition for writ of mandate was neither filed nor served within 90

days after the council's decision. Both petitions are untimely. These defects appear on the face of the pleadings and cannot be cured by amendment. City's demurrer was properly sustained without leave to amend. We have no jurisdiction to address the merits of appellant's complaints against the City.

Because we rule that appellant's petition is time barred, we need not reach the issue of whether the petition is also barred by reason of its failure to include an indispensable party.

Finally, we wish to acknowledge the gracious remarks of City's attorney, Gregory Kunert, that endorse Ms. Lee's valiant effort on her own behalf. Her persistence and determination are commendable.

The judgment is affirmed. The parties shall each bear their own costs.

NOT TO BE PUBLISHED

BURKE, J.*

We concur:

GILBERT, ACTING P.J.

COFFEE, J.

---

*Assigned by the Chairperson of the Judicial Council.

Thomas H. Parrott, Judge

Superior Court County of Los Angeles

Teng Li-Ann Lee, in pro. Per., for Plaintiff and Appellant.

Carol W. Lynch, City Attorney; Richards, Watson & Gershon, Gregory M. Kunert and Daniel L. Pines for Defendant and Respondent.

APPENDIX C

Second Appellate District, Division Six, No B114776
S078089
IN THE SUPREME COURT OF CALIFORNIA

TENG LI-ANN LEE, Appella:

v.

CITY OF RANCHO PALOS VERDES, Respondent

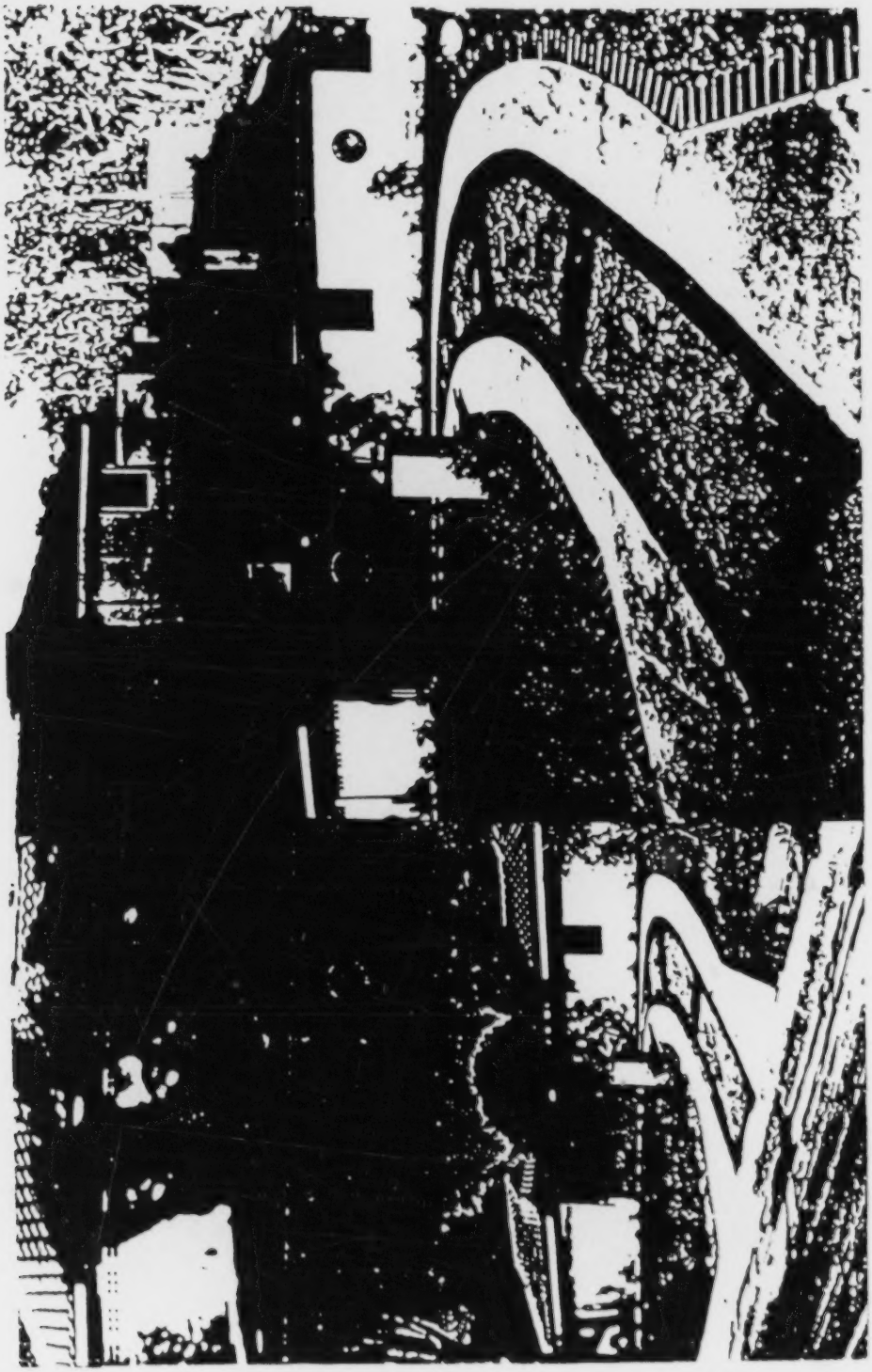
SUPREME COURT
FILED
MAY 26 1999
Clerk
DEPUTY

Petition for review DENIED

GEORGE

Chief Justice

APPENDIX D





50% open space credit. Max. driveway coverage 900 sf in front yard setback

* Max. light wattage: 75 watts

light fixtures shall be included in 42" height max.

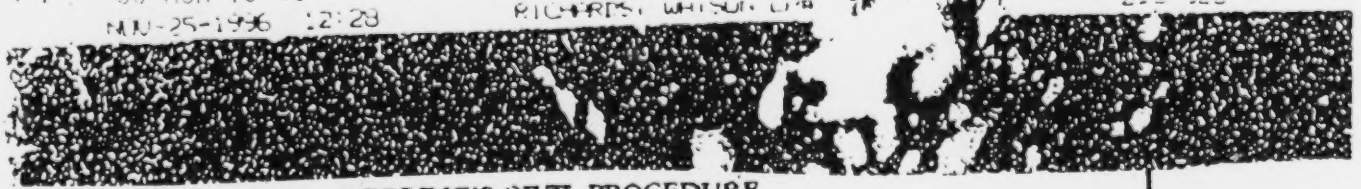
SITE PLAN

SCALE 1/8"=1'-0"

000181

APPENDIX D-1

MON 15:46 CITY OF RIV 3|U377986
NOV-25-1996 12:28 RICHARDS, WATSON, GER



tlative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of

3d (Rev) Assault and Other Willful Torts § 326, Eminent Domain §§ 82, 189, 327, Games, Contests, and Prizes § 64; Cal Jur 3d Administrative Law §§ 13, 127, 156, 250, 258, 287, 288, 298, 310, 317, 321 et seq., 334–337, 340, Appellate Review §§ 8, 62, Building and Construction Contracts §§ 30, 48, Mandamus and Prohibition §§ 23, 39, Pollution and Conservation Laws §§ 220, 343, 366, 395, Public Aid and Welfare § 42, Public Utilities § 101, Unemployment Compensation § 39, Zoning and Other Land Controls §§ 30, 173, 175; Miller & Starr, Cal Real Estate 2d §§ 18:70, 20:74, 20:99, 20:102, 20:105, 20:110, 20:114, 20:116, 20:124, 20:141; Rutter Cal Prac Guide, Civil Appeals and Writs §§ 5:26 et seq., 8:127 et seq.

§ 1094.6. Time limit for seeking review of administrative determinations; Preparation of record; Application to local agency. (a) Judicial review of any decision of a local agency

following de
findings, wit
(c) The con
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commission.
made the de
petitioner w
written req
recover fro
transcribin
record. Su
script of t
notices and
hearing off
exhibits, a
of the loca
officer, or
other pape
(d) If the
record as
days after

APPENDIX D-3

3136 Barkentine Road
Abalone Cove
Rancho Palos Verdes CA 90275
August 21, 1999
To Whom It May Concern
I attend every council meeting of the City of Rancho Palos Verdes, and most of the Planning Commission meetings

I am therefore familiar with the case of Teng Li-Ann Lee I was present on August 6, 1996 when the city council voted 4 – 1 to uphold the appeal and have the illegal driveway removed I was also present August 20, 1996, when the minutes of August 6 were approved During this entire meeting nothing further was said about this case Then on September 3, 1996, the city manager, without noticing the Appellant, overrode the city Council's decision and recommended reconsideration of the August 6 decision to have the illegal driveway removed To me, this was wrong The city manager cannot reconsider the city council's decision by himself without going through the proper channels

Sincerely yours

Lois Knight Larue (310) 377-3489

P S I want to be a witness in support of Teng Li-Ann Lee I wrote this letter by hand July 15, 1998 and it was submitted to the Supreme Court of the State of California I am typing the same letter now for submission to the Supreme Court of the United States